

APPEAL NO. 040550
FILED APRIL 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 17, 2004. The hearing officer determined that: (1) respondent/cross-appellant (claimant herein) did not sustain a repetitive trauma injury in the course and scope of her employment; (2) claimant timely reported her claimed injury; (3) appellant/cross-respondent self-insured (carrier herein) waived the right to contest the compensability of the claimed injury, so the injury is compensable as a matter of law; and (4) claimant had disability from August 1 through September 1, 2002. Carrier appealed the determinations regarding carrier waiver, compensability, and timely notice. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order. In the response, claimant also said she disagreed with the hearing officer's determination that she did not sustain a repetitive trauma injury. We will treat this response, which was timely filed as an appeal, as a request for review. Carrier responded to claimant's cross-appeal and stated that the hearing officer did not err in determining that claimant did not sustain a repetitive trauma injury. Carrier also said claimant appealed another determination, but claimant actually said she agreed with that determination and did not appeal it.

DECISION

We affirm.

We first note that claimant indicated that she disagreed with the determination that she did not sustain a repetitive trauma injury in the course and scope of her employment. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends the hearing officer erred in determining that it waived the right to contest the compensability of the claimed injury. After she filed a claim, claimant changed her claimed date of injury in this case from August 22, 2002, to _____. The hearing officer determined that carrier received first written notice of the claim on February 24, 2003, and that it did not file a Payment of Compensation or Notice of Refused/Dispute Claim (TWCC-21) until March 10, 2003. Carrier contends that it did not receive written notice of the injury until June 16, 2003, and that it then filed a timely dispute three days later. Carrier's argument in this regard is that, since claimant changed the claimed date of injury, carrier then was considered to have received written notice of a new and different injury, so carrier had a new seven-day period to dispute. Carrier seems to assert that every time a new date of injury is alleged regarding the

same claim, the seven-day period to dispute begins anew. We disagree. This is one claim for one injury; there is no new or different injury. Even considering the wording of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)), the hearing officer could consider that carrier had adequate written notice of this claim and that a change in the date of injury for an occupational disease claim does not then mean that new written notice of injury is required and a new seven-day period begins. See *generally* Texas Workers' Compensation Commission Appeal No. 981432, decided August 12, 1998; Texas Workers' Compensation Commission Appeal No. 011090 and 011091, decided July 2, 2001. Carrier's TWCC-21 filed on June 19, 2003, was not a timely dispute and the hearing officer did not err in determining that carrier waived the right to contest the compensability of the claim.

Carrier next contends the hearing officer erred in determining that claimant timely reported her claimed injury and that it is not relieved of liability under Section 409.002. By failing to timely contest compensability, carrier also lost the right to assert defenses under Section 409.002 based on the claimant's failure to give timely notice of injury to the employer. Texas Workers' Compensation Commission Appeal No. 023066, decided January 14, 2003. For that reason, there is no reversible error in the determination that carrier is not relieved of liability in this case.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SP
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge